

1
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

9 JOSE MIGUEL GUTIERREZ,
10 *Petitioner,*
11 vs.
12 BRIAN E. WILLIAMS, *et al.*,
13 *Respondents.*

No. 2:10-cv-00109-JCM-NJK

ORDER

16 This represented habeas matter comes before the court for initial review of the
17 counseled amended petition (#44). Following initial review, a response will be directed.

18 IT THEREFORE IS ORDERED that respondents shall have **thirty (30) days** from entry
19 of this order within which to respond, including potentially by motion to dismiss, to the petition,
20 as amended. **Any response filed shall comply with the remaining provisions below,**
21 **which are tailored to this particular case based upon the court's screening of the**
22 **matter and which are entered pursuant to Habeas Rule 4.**

23 IT FURTHER IS ORDERED that any procedural defenses raised by respondents in this
24 case shall be raised together in a single consolidated motion to dismiss. In other words, the
25 court does not wish to address any procedural defenses raised herein either in *seriatum*
26 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural
27 defenses omitted from such motion to dismiss will be subject to potential waiver.
28 Respondents shall not file a response in this case that consolidates their procedural

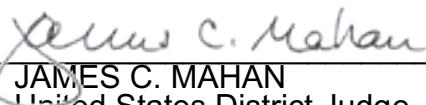
1 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2)
2 as to any unexhausted claims clearly lacking merit. If respondents do seek dismissal of
3 unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to
4 dismiss not in the answer; and (b) they shall specifically direct their argument to the standard
5 for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir.
6 2005). In short, no procedural defenses, including exhaustion, shall be included with the
7 merits in an answer. All procedural defenses, including exhaustion, instead must be raised
8 by motion to dismiss.

9 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
10 specifically cite to and address the applicable state court written decision and state court
11 record materials, if any, regarding each claim within the response as to that claim.

12 IT FURTHER IS ORDERED that petitioner shall have **thirty (30) days** from service of
13 the answer, motion to dismiss, or other response to file a reply or opposition.

14 IT FURTHER IS ORDERED that, absent extraordinary circumstances, any request for
15 an extension based upon scheduling conflicts between this case and other matters in this
16 district shall be sought in the later-filed case.¹

17 DATED: April 3, 2014.

19 
20 JAMES C. MAHAN
21 United States District Judge

22
23
24
25
26
27 ¹This proviso does not constitute any reflection on the diligence of counsel. The court has not been
28 able to reach this matter as promptly as it would have preferred, and it is seeking to triage the case forward
for a final resolution ahead of matters that have not been pending from inception for as long.